

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

CLAIMANT: Buttelman Ranches

CASE 41G-0606-R-2022
41G 197194-00

NOTICE OF INTENT TO APPEAR: Buttelman Ranches

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41G 197194-00 is an irrigation claim from Willow Creek. It received a Department of Natural Resources (DNRC) issue remark concerning the place of use.

2. The claimant, Buttelman Ranches, was ordered to meet with the DNRC in an informal attempt to resolve the issue remarks appearing on the claim.

3. On February 17, 2023, Kara Huyser, water resource specialist with the DNRC, filed a memorandum with recommendations for issue remark resolution. The memo indicates that Bill and Karen Buttelman contacted the DNRC to address the issue remark appearing on claim 41G 197194-00.

4. Claim 41G 197194-00 identifies a 198.00-acre place of use. It received an issue remark stating:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 150.00 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

The DNRC indicates that it met with Bill Buttelman to discuss this issue remark. The discussion included a review of aerial imagery from 1947 and 1979. Additionally, Buttelman explained that he filed an affidavit in 1992 that described the place of use as it appeared in the 41G Preliminary Decree:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	101.75			16	1N	1E	GALLATIN
2	96.25			17	1N	1E	GALLATIN
Total:	198.00						

Accompanying the affidavit was a map. The map depicts a place of use that only amounts to 150.00 and is likely the source of the issue remark appearing on the claim.

The DNRC assisted the claimants in producing a new map that is a more accurate representation of the historical use of claim 41G 197194-00. The new map is included in the DNRC memorandum.

On February 15, 2023, the claimant filed a Motion to Amend that attaches a map depicting 198.00 acres irrigated. The Motion to Amend corroborates the information provided by the DNRC. The claimants state the map is a more accurate delineation of the

place of use and that the acreage is accurately defined as 198.00 acres. The corrected map depicts the 198.00 place of use claimed by Buttelman Ranches and resolves the issue remark appearing on the claim. The issue remark should be removed from the claim abstract.

6. An additional issue remark appearing on claim 41G 197194-00, stating:

POINT OF DIVERSION AND DITCH NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

This issue remark is a notice-type issue remark. It provides notice of changes made to the claim since the issuance of the Basin 41G Temporary Preliminary Decree. Claim did not receive any objections concerning the reservoir record modifications. The remark has served its purpose of providing notice and should be removed from the claim.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

3. The information provided by the claimant and the DNRC is sufficient to resolve the issue remarks appearing on claim 41G 197194-00.

RECOMMENDATIONS

1. The issue remarks should be removed from claim 41G 197194-00.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the issue remarks have been removed from the claim abstract.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Buttelman Ranches
PO Box 589
Three Forks, MT 59752-0589

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 197194-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BUTTELMAN RANCHES
PO BOX 589
THREE FORKS, MT 59752 0589

Priority Date: DECEMBER 31, 1866

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.50 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 198.00

Source Name: WILLOW CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	7	1S	1E	GALLATIN

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Ditch Name: BUTTLEMAN DITCH

2		SWSENE	31	1N	1E	GALLATIN
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Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Ditch Name: IRISH SLOUGH DITCH

Period of Use: MAY 1 TO SEPTEMBER 30

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	101.75			16	1N	1E	GALLATIN
2	96.25			17	1N	1E	GALLATIN

Total: 198.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

197192-00

197193-00

197194-00